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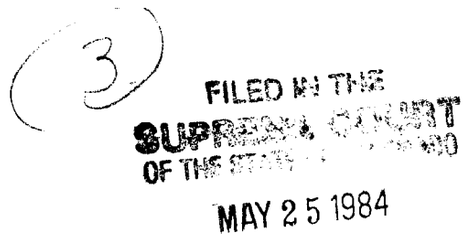
Branson v. Denver



SUPREME COURT, STATE OF COLORADO

Case No. 84-SA-5

BIRDIE L. BRANSON,

Plaintiff-Appellant,

v.

THE CITY AND COUNTY OF DENVER; BOARD OF TRUSTEES OF THE FIREMEN'S PENSION FUND OF THE CITY AND COUNTY OF DENVER; and ELVIN R. CALDWELL, in his capacity as Secretary of the Board of Trustees of the Firemen's Pension Fund,

Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER, COLORADO, HONORABLE HAROLD D. REED, DISTRICT JUDGE

ANSWER BRIEF OF DEFENDANTS-APPELLEES

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Defendants-Appellees.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

In her opening brief the Plaintiff-Appellant (Plaintiff) adequately sets out the issues to be reviewed.

STATEMENT OF THE CASE

The Plaintiff's opening brief contains an adequate statement of the case, except with regard to the District Court's ruling on the Plaintiff's request for declaratory judgment: the court held that the Plaintiff's third claim for relief in the nature of declaratory judgment as to the statute's constitutionality as applied to her was barred by the statute of limitations; it fully considered her second claim for relief in the nature of declaratory judgment as to the statute's facial constitutionality.

STATEMENT OF FACTS

The Plaintiff's statement of facts is for the most part accurate, except to the extent that it presents legal argument and editorial characterizations. It should also be noted that the statutory provision in question allows benefits to spouses of firefighters who are married prior to their application for retirement, not prior to their actual date of retirement as the Plaintiff indicates.

SUMMARY OF ARGUMENT

The Defendants-Appellees (Defendants) believe the District Court utilized the appropriate standards of review and correctly denied the Plaintiff's claims under Rule 57 and Rule 106, C.R.C.P. In examining the statute, the court applied the rational basis test, as well as considering that statutes are presumed to be constitutional and must be proved unconstitutional beyond a reasonable doubt. The court concluded that the challenged statute satisfied the rational basis test. The court also concluded that the Defendants' action in denying the Plaintiff's claim for pension benefits was supported by competent evidence in the record and should be affirmed. The court's ruling that the Plaintiff's third claim for relief was barred by the statute of limitations was correct.

I.

THE TRIAL COURT APPLIED THE APPROPRIATE STANDARDS OF REVIEW.

While the Plaintiff notes that the parties agree that the rational basis test is to be used to determine the constitutionality of the statute (Brief at 8), there are two respects in which her explication of this agreement is deficient. First, while the Plaintiff apparently acknowledges the applicability of the rational basis test, she continues to find "significance" in the fact that the challenged provision concerns marriage (Brief at 17). There would seem, therefore, to be some implication that a heightened scrutiny is necessary in the instant case. The City would submit that in this regard the instant case is similar to Dawson v. Public Employees' Retirement Association, 664 P.2d 702 (Colo. 1983). In response to the charge that the statute in that case infringed on the employee's right to marry, the court found

> ...we are left with only a mere suggestion that the statutory scheme somehow creates an adverse incidental effect on that right. Simply because a state statute relates in some indirect way to the incidents of or prerequisites for marriage does not mean that the statute must be subjected to the strict scrutiny standard of review.
> 664 P.2d at 708

The City believes this characterization applies equally to the case at hand, and that Dawson and the cases cited therein negate

the notion that statutes which contain marital classifications are subject to anything other than the rational basis test. In addition, in a case cited by the Plaintiff the Colorado Supreme Court flatly states:

> We do not view the issue of marital obligation as a fundamental right. No court has so extended the law and we are not inclined to do so.
> Kistler v. Industrial Commission, 192 Colo 172, 556 P.2d 895,897 (1976)

The Court went on in that case to utilize the appropriate rational basis test.

The second aspect of judicial review which the Plaintiff neglects to mention is that for purposes of constitutional challenge, statutes are presumed to be constitutional and their unconstitutionality must be proved beyond a reasonable doubt. This attitude of judicial deference to legislative enactment is constant throughout Colorado case law. Calling these "basic rules of statutory interpretation," this approach was well-stated in Harris v. Heckers, 185 Colo. 39, 521 P.2d 766 (1974):

> Courts should not seek reasons to find a statute unconstitutional. Rather, it is the duty of courts to presume the statute is constitutional. In order to prevail, one who attacks a statute must prove its invalidity beyond a reasonable doubt.
> 521 P.2d at 768.

Again, in Mosgrove v. Town of Federal Heights, 190 Colo. 1, 543 P.2d 715 (1975) the Court said:

> Legislatures are presumed to have acted constitutionally; statutory classifications will be set aside only if no grounds can be conceived to justify them.
>
> 543 P.2d at 718.

And finally as recently as Dawson, supra, the Court referred to its "relaxed standard of judicial scrutiny," and again cautioned:

> It must be borne in mind that under this relaxed standard of judicial scrutiny there is a presumption of constitutionality, and the burden is on the party attacking the statute to establish its unconstitutionality beyond a reasonable doubt.
>
> 664 P.2d at 708.

II.

THE CLASSIFICATION IN QUESTION IS RATIONALLY BASED IN A LEGITIMATE STATE INTEREST.

A. The Plaintiff's attempted application of the rational basis test is erroneous.

The Plaintiff sets up various "straw men" as follows and topples them in order to prove the statute has no rational basis. First the Plaintiff argues that part of the statute was found unconstitutional in Carter v. Firemen's Pension Fund, 634 P.2d 410 (Colo. 1981), therefore, the instant part of the statute is suspect; fiscal certainty is valid only in a sophisticated actuarial system; that firefighters do not vary sufficiently from police officers to support any distinction in their treatment; that firefighters in Lamar have as hazardous a job as those in Denver; that divorce and remarriage end the right to pension benefits; that a widow who married a firefighter one day before

his application for retirement benefits is eligible for pension benefits; that post-retirement widows may have a more difficult lot than pre-retirement widows. And finally, the Plaintiff notes that the rational bases that the trial court approved are "necessarily somewhat speculative," and instead provides what she believes to be the legislature's real motives in writing the law. We do not learn, however, why the Plaintiff's rationale is any less speculative or more reliable than that of the trial court. There is a basic problem with the Plaintiff's approach. It is not a valid exemplum of a court's stance in an equal protection analysis. A court does not attempt to dredge up reasons why a statute is unconstitutional. Instead it determines if any rational basis exists to support the legislation. The Colorado Supreme Court has stated the case as follows:

> It is urged that the provisions in question offend against the provision of the Fourteenth Amendment to the Constitution of the United States forbidding a state to make or enforce any law denying any person the equal protection of the laws. The argument in support of this objection challenges the classification adopted by the Legislature. But, to constitute class legislation within the constitutional prohibition, the classification must be unreasonable. The question of classification is primarily for the Legislature. Courts will not interfere with the legislative classification unless it appears that there is "no fair reason for the law that would not equally require its extension to the excepted class." [Citations omitted.] In the matter of classification, the Legislature has a wide range of discretion.
> Driverless Car Co. v. Armstrong, 91 Colo. 334, 14 P.2d 1098, 1100 (1932).

The Court went on to cite language of the U.S. Supreme noting that:

> the claim of repugnancy to the equality clause cannot be supported by mere speculation or conjecture.
> Ibid.

B. The Carter case is inapposite to the issue at hand.

The Plaintiff appears to find much comfort in Carter, supra. In Carter a portion of the statute under consideration in the instant case was found to be unconstitutional. The provision in question in that case accorded benefits only to survivors who had been married by means of a ceremony "legally performed by a duly authorized person," thus excluding common-law spouses from the same benefits. That decision, however, does not aid the Plaintiff in the instant case. The rational basis test is of necessity a case-by-case determination and in Carter the court found that the suggested bases for that particular differential treatment were not rational. The Court in Carter found no rational basis for the distinction because Colorado law provides that thee is no distinction between such marriages.

> This state has long recognized the validity of common-law marriages.
> 634 P.2d at 412

The Defendants assert there is no such conflicting tenet in Colorado law applicable to the instant case, and no reason why the legislature could not distinguish between spouses who shared

the hazards of the firefighter's life and those who did not, and opt for a system whereby potential beneficiaries are known as of a date certain.

C. Statutes can constitutionally distinguish between cities on the basis of population size.

The Plaintiff takes an extremely restrictive view of the fact that the statute applies to cities with populations over 100,000 and one that is not supportable in the case law. It should be noted that this is the basic organizational structure of the Fire-Police-Sanitation law, Article 30 of Title 31 of the Colorado Revised Statutes; distinctions between provisions for cities based on population size run throughout the law. So in this argument the Plaintiff is taking on much more than merely the provision in question. The Plaintiff notes that widows should be treated equally regardless of the size of the city in which they reside. The fact is, as the trial court pointed out, all legislatures frequently make different laws based on population size. This argument is apparently only the Plaintiff's personal disagreement with the legislature's wisdom in this regard. Certainly a firefighter in a densely-populated urban area with high-rise buildings and ramshackle slums operates in a different milieu from one in a sparse, rural setting.

The U.S. Supreme Court has addressed the issue of classifications based on population size. In North v. Russell, 427 U.S. 328, 96 S.Ct. 2709, 49 L.Ed.2d 534 (1976), the Court examined a Kentucky constitutional provision which contained such a classification. While noting with approval that "all people

within a given city and within cities of the same size are treated equally," it traced the efficacy of this doctrine back as far as 1880, quoting from its decision in Missouri v. Lewis, 101 U.S. 22, 25 L.Ed. 989:

> Each state...may establish one system of courts for cities and another for rural districts, one system for one portion of its territory and another system for another portion. Convenience, if not necessity, often requires this to be done, and it would seriously interfere with the power of a State to regulate its internal affairs to deny this right. 427 U.S. at 339.

The question has also been settled in this jurisdiction with respect to the firefighter pension laws: the population of a municipal corporation provides a reasonable basis for legislative classification. This result was reached by the Colorado Supreme Court in 1946 when it stated:

> We have held many times that the population of municipal corporations affords a reasonable basis for legislative classification in the passage of statutes relating thereto, and that such do not conflict with constitutional provisions inhibiting local or special legislation. [Citations omitted.]
>
> Bedwell v. Board of Trustees, Firemen's Pension Fund, 114 Colo. 475, 166 P.2d 994, 996 (1946).

D. The District Court's rational basis analysis is valid; the legislation is supportable on the given bases.

The Plaintiff argues that the legislation cannot be supported on the basis of fiscal certainty, nor on the basis of differentiating between widows who shared the hazards of the firefighter's existence on a daily basis during active employment. The Plaintiff is especially unhappy that the

legislature chose to distinguish between firefighters and police officers, a distinction the Plaintiff terms "ludicrous." To the contrary, as an employer of both types of employees the City would note that the requisite knowledge and skills and the attendant risks of the average employee in each profession are widely variant. Police officers are not exposed to heat, smoke, chemicals, tower climbing, water rescue, or high pressure hoses on a daily basis.

The Plaintiff says the trial court "fails to indicate how the distinction drawn by the Legislature is rationally related to that objective" of fiscal certainty. She then tells us in footnote 6 that fiscal certainty can only be tied to a sophisticated system of "actuarial evaluation based on potential beneficiaries at the time of a fireman's retirement," which she alleges was not contained in the challenged statute. Perhaps the court's reasoning is instead so straightforward as to elude arcane sensibilities. The City believes the ruling was quite simple: when an unmarried firefighter retires, it is known that his benefits will terminate with his death and that the continuation of benefits will not be extended for the span of another's lifetime. If this is open to change at any time by the acquisition of a post-retirement spouse, there is less certainty as to what financial liabilities will be incurred.

In granting firefighters pensions, the legislature must describe who will benefit from the allotted fund. The largesse must end at some clearly-defined point in order to preserve the fiscal integrity of the fund. This is fiscal certainty. As the

United States Supreme Court stated in Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 97 S.Ct. (1977), 52 L.Ed. 2d 513, with reference to a State's unemployment compensation fund:

> It is clear that protection of the fiscal integrity of the fund is a legitimate concern of the State. We need not consider whether it would be "rational" for the State to protect the fund through a random means, such as elimination from coverage of all persons with an odd number of letters in their surnames. Here, the limitation of liability tracks the reasons found rational above, and the need for such limitation unquestionably provides the legitimate state interest required by the equal protection equation. 431 U.S. at 493.

The Colorado Supreme Court has recognized the legitimacy of such an interest with reference to the Public Employee Retirement Association fund in Dawson: the "governmental interest in preserving resources and protecting the fiscal integrity of the survivors benefit reserve fund." 664 P.2d at 709.

The other part of the rational basis analysis is that the legislature distinguished between spouses married to the firefighter at the time of his application for retirement because they shared in the hazardous day-to-day existence of the firefighter, as opposed to post-retirement spouses. An examination of Plaintiff's arguments in this regard reveals that her only real quarrel with this basis is that this classification excludes her. Again, in this regard, the Plaintiff's analysis expects too much of and exacts too stringent a standard from the rational basis test. The court in Dawson, supra, rejected the notion that a statutory scheme must be "a paradigm of equity" (664 P.2d at 707). At bottom, the Plaintiff merely disagrees

with the legislature's philosophy. She would have structured the scheme differently, and she believes, more equitably. In Crawford v. City and County of Denver, 156 Colo. 292, 398 P.2d 627, 635 (1965), the Court noted with approval the words of an Ohio court examining a pension plan classification: "[u]nattainable exactness is not required in classification."

The courts are not the proper forum by which citizens affect legislative policy decisions. As the Plaintiff's Statement of Facts indicates, the Plaintiff initially placed her hopes in the correct channel, looking for a change through legislation. Only "[w]hen it became apparent that Mrs. Branson's situation would not be remedied" (Brief at 4) by the 1979 legislative revision, did she then have recourse to the courts. Unfortunately her quarrel remains with the legislature. The Plaintiff's notion of the judicial role was refuted by the Colorado Supreme Court in the context of another challenged benefit classification:

> It is to be noted that we are not here concerned with the "wisdom" of the legislative pronouncement under consideration. There could be, and undoubtedly was, a considerable difference of opinion within the General Assembly as to whether this [legislation] was "sound" from the sociological and economic point of view. But this is a matter to be determined by the legislature, not the judiciary, and the General Assembly has now resolved that dispute. The only concern of the judiciary in this

> circumstance, then, is to determine whether these legislative efforts in anywise offend the basic law of the land.
>
> Myers v. State 162 Colo. 435, 428 P.2d 83, 87 (1967)

It is apparent throughout the pleadings and briefs in this matter that the Plaintiff sees herself as more deserving of benefits than others to whom the statute accorded benefits. See, for example Brief at 15, where the Plaintiff notes that she "shared for many years the result of [her husband's] hazardous duty," i.e., his post-retirement disability. This judgment may or may not be true, but it is in essence irrelevant. All classifications by their very nature draw fixed lines which include some and exclude others. This is inevitable. Legislation does not make case-by-case judgments. It is designed to provide broad judgments. The Utah Supreme Court has ably explicated this point:

> No matter where the line is drawn, whether it be 15 years, 10 years, 8 years, or any other place, the classification will undoubtedly seem harsh and unreasonable to those who are excluded just below the line. Some such inequities are practically inevitable in all retirement systems....The fact that the borderline cases ... may not be distinguishable does not render the whole classification unjust discrimination.
>
> Hansen v. Public Employees Retirement System Board, 122 Utah 44, 246 P.2d 591, 598 (1952).

See also Hodory, supra; Califano v. Jobst, 434 U.S. 47, 98 S.Ct. 95; Dawson, supra, 54 L.Ed. 2d. 228.

Finally, the Defendant would also note that the challenged legislation was in effect for some 34 years, between 1945 and 1979. It was equally applicable to the numerous firefighters who retired in those years. Along with the spouses of these others, the Plaintiff was aware that the statute excluded her from benefits. Given the state of the law, she had no expectation of benefits, and perhaps could have taken alternative means to provide for income upon her husband's death. The Plaintiff notes that the 1979 revision to the pension law changed the method for determining survivor benefits, making post-retirement widows eligible for benefits, citing §31-30-1007(5)(b)(I), C.R.S. The Plaintiff fails to note, however, that in the new law all survivor's benefits are dependent upon the firefighter electing an actuarially reduced benefit payable to himself during his lifetime in exchange for extending continued benefits to his surviving spouse (see §31-30-1007(5)(a), C.R.S.). By this token, in the instant case the Plaintiff and her husband could have used part of the benefit he received during his lifetime to provide for her after his death.

III.

THE TRIAL COURT'S RULING ON THE THIRD CLAIM FOR DECLARATORY JUDGMENT WAS CORRECT.

The Plaintiff argues that the trial court erred in finding that her claim for declaratory judgment as presented in her third claim for relief was barred by the statute of limitations. The third claim for relief alleged that the statute was unconstitutional as applied to the Plaintiff, in that it failed to consider factors such as the length and circumstances

of the Plaintiff's marriage to the deceased firefighter. As the trial court correctly noted, the Plaintiff's claim with respect to the statute's application to her arose upon the death of her husband in 1976. The action before the district court, however, was not filed until March 1983, some seven years later. Nor was the Board notified of Plaintiff's intention to file for benefits until January of 1983. Therefore, the court correctly concluded that the general statute of limitations in §13-80-108(1)(b), C.R.S. was applicable, barring this claim for relief. Board of Trustees of Policemen's Pension Fund v. Koman, 133 Colo. 598, 298 P.2d 737 (1956); Flanigan v. Public Employees Retirement Association, 191 Colo. 198, 557 P.2d 702 (1976).

The Plaintiff states that the claim should be allowed because "[b]y definition, the issue was neither ripe nor did Mrs. Branson have standing to challenge the application of the statute until the Board used it as a basis for denying her claim" (Brief at 20). This argument was disposed of in Koman, supra, which dealt with the issue of whether or not a pension claimant has an unlimited period of time in which to assert his rights. Koman had not filed for a disability pension until six years after his alleged disability was incurred. The Court ruled that the Plaintiff's failure to

> take some preliminary antecedent step, such as the service of notice upon the person against whom the cause of action exists

must be taken as abandonment of any rights to claim a pension. The Court went on to state, in discussing the statute of limitations:

> it is not the policy of the law to permit a party against whom the statute runs to defeat its operation by neglecting to do an act which devolves upon him in order to perfect his remedy against another. If this were so, a party would have it in his own power to defeat the purpose of the statute in all cases of this character.
> 298 P.2d at 741

The Court also noted that the right to receive a pension is not a continuing right and it may be barred by laches or by a statute of limitations. Therefore, the Plaintiff cannot plead that her cause of action did not accrue until after she filed with the Board in 1983; it was within her power to file with the Board in 1976, and indeed it was her duty to do so.

The Plaintiff also argues that "[t]he statute of limitations should not be applied to limit a facial challenge to a statute" (Brief at 20). The City believes this is an accurate statement of the law, and it is indeed one of the bases for the action of the trial court in reviewing the facial constitutionality of the statute in question. Yet the Plaintiff alleges a supposed injury when in fact she was granted exactly the remedy she seeks - an examination of the facial validity of the statute. The fact is that the trial court fully considered whether the statute was constitutional on its face, the request set out in Plaintiff's second claim for relief. The court did not, however, reach the result desired by the Plaintiff because it found the statute constitutional.

CONCLUSION

The Defendants respectfully request that the judgment and order of the District Court be affirmed.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that I have mailed a true and correct copy of the foregoing DEFENDANTS-APPELLEES' ANSWER BRIEF by depositing the same in the United States mails this 25th day of May 1984 to:

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